IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 6 of 1996.

Judgement reserved on: 21.9.2007

Date of decision: 6.11.2007.

Sonam Ram and Ors. **….Appellants**

Vs.

Jagat Ram and Ors. **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellants : Mr.Rakesh Jaswal, Advocate.

For the Respondents : Mr. K.D. Sood, Advocate.

Kuldip Singh, Judge.

This appeal is directed against the judgment, decree dated 16.8.1995 passed by learned Addl. District Judge, Kullu in Civil Appeal No.20 of 1995, reversing judgment, decree dated 28.2.1995 passed by learned Senior Sub Judge, Lahaul-Spiti exercising the powers of Sub Judge Ist Class, Kullu in Civil Suit No.40 of 1992.

2. The facts in brief are that respondents-plaintiffs filed a suit for declaration that land comprising Khasra Nos. 2972 and 2971 measuring 1 bigha 19 biswas, situated in Phati Vashishat Kothi Jagatsukh, Tehsil and Distt Kullu vide jamabandi for the year 1987-88 is jointly owned by the parties in which respondents are joint owners

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Whether the reporters of the local papers may be allowed to see the Judgment?Yes

in possession to the extent 5/24 shares and as such they are entitled to separate their shares by way of partition with consequential relief of injunction restraining the appellants-defendants from denying the title of the respondents in the suit land and from dispossessing or ousting them till the suit land is lawfully partitioned among them.

3. The further case of the respondents is that the suit land is jointly owned and possessed by the parties and the same has not been partitioned though for the cultivation purposes the parties are cultivating their respective shares. The appellants were asked many times to admit the claim of the respondents and to get the land partitioned and separate the shares of respondents but appellants are not listening at all and they have refused to admit the claim of the respondents a week prior to the institution of the suit. In these circumstances the suit was filed.

4. The appellants filed written statement in which they took preliminary objections that respondents are not in possession of the suit land and as such suit for declaration and injunction is not maintainable, the suit is not within limitation and respondents have not approached the Court with clean hands. On merits, it has been denied that respondents are joint owners in possession of the suit land. Nathu Ram etc. along with one Tej Ram father of respondents were owners in possession of land comprised in Khasra No.2972, measuring 19 Biswas. After the death of Tej Ram his estate was inherited by his widow Smt. Budhi and his sons respondents. Nathu Ram etc. and Smt. Budhi vide registered sale deed dated 12.6.1969 sold their entire share in the aforesaid khasra Nos. 2972 and 2971,

measuring 1-15 bighas in favour of appellants and their uncle Loza Ram. Thus appellants and Loza Ram became absolute owners in possession of land measuring 1-0 bighas comprised in khasra No.2971 and joint owners in possession of land measuring 19 biswas comprised in khasra No.2972. On the death of Loza Ram, appellants inherited his estate including his share in the suit land.

5. Smt. Budhi on 19.11.1969 when respondents were minors for legal necessity and for the benefit of minors sold entire shares of respondents in the suit land in favour of appellant Tashi Ram for a sale consideration of Rs.1125/- and on the same day possession was delivered to Tashi Ram and to this effect Smt. Budhi mother of respondents also executed a writing on 19.11.1969 in the presence of witnesses. According to appellants they are absolute owners in possession of the suit land since 19.11.1969 on the basis of sale. In alternative they have pleaded adverse possession with effect from 19.11.1969 regarding the shares of respondents in the suit land. On these grounds the appellants resisted the suit of the respondents. The respondents filed replication to the written statement and denied the case set up by the appellants.

6. The learned Senior Sub Judge vide judgment, decree dated 28.2.1995 under issue No.2 has held that Smt. Budhi Devi mother of the respondents has not sold the shares of respondents in the suit land but under issue No.3 he has held that appellants have become owners of the suit land by way of adverse possession. The respondents filed appeal against judgment, decree dated 28.2.1995 which has been allowed by the learned Addl. District Judge, who

decreed the suit of the respondents and granted declaration that respondents are joint owners in possession of the suit land along with appellants to the extent of their shares and are entitled to get their shares partitioned in accordance with law. He also restrained the appellants from denying the title of the respondents in the suit land, hence, appellants have come in appeal.

7. The appeal has been admitted on following Substantial Questions of Law:

1. *Whether the findings arrived at by the Ist Appellate Court below that the learned trial Court has fallen in error in holding that the appellants have become owner of the suit land by way of adverse possession are sustainable in law and on facts of the case?*

2. Whether the findings arrived by the learned appellate Court are based on no evidence overlooking and misreading the documentary and the oral evidence available on record?

8. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellants has submitted that lower Appellate Court has erred in appreciating the material on record and has erred in rejecting the claim of the appellants of adverse possession on the suit land which they have proved. The learned lower Appellate Court has over-looked and misread the evidence and impugned judgment, decree are based on no evidence. The learned counsel for the respondents has supported the impugned judgment, decree.

Substantial Questions of Law 1 and 2

9. Both the substantial questions of law are interconnected therefore, they are being disposed of collectively. The short

question before this Court is whether appellants have become owners of the suit land by way of adverse possession to the extent of shares of respondents in the suit land. The case of the appellants is that they have purchased the shares of the respondents through their mother Smt. Budhi vide Ex.DW 1/B. This document is not registered and therefore, it has been rightly held by the Court below that the shares of the respondents could not have been sold through Ex.DW 1/B. Jagat Ram one of the respondents has appeared as PW-1 and has deposed that the suit land is jointly owned by the parties and it has not been partitioned. The apple trees have been planted on this land and they are enjoying the benefit of such trees . This witness has been cross-examined on behalf of the appellants mainly on the ground that the suit land has been sold by their mother but no suggestion has been given to this witness that since 19.11.1969 the appellants are in hostile possession of the suit land against the respondents.

10. PW-2 Devi Ram has stated that the suit land is in possession of Jagat Ram. Tashi Ram one of the appellants has appeared as DW-1, he has stated that in 1969, 1-14 biswas of land was purchased from Smt. Budhi mother of respondents vide sale deed Ex.DW-1/A. The remaining 5 Biswas was purchased by him vide receipt Ex.DW-1/B for a consideration of Rs.1125/-. He developed the land and respondents never objected his possession. They filed partition case before the Tehsildar which was dismissed. In examination in chief he has not stated that

the appellants claimed hostile title against respondents from the date their mother allegedly sold shares of the respondents vide Ex.DW-1/B In his statement he has not deposed his or any other appellant's animus possidendi to hold the suit land to the exclusion of respondents. In fact the statement of DW-1 Tashi Ram regarding adverse possession on the suit land against respondents is completely silent. On the contrary in his cross-examination he has stated that he requested the respondents for execution and registration of the sale deed in between the years 1980-85 several times. In other words till 1985 the appellants did not claim adverse possession on suit land against respondents and admitted the title of the respondents on the suit land and that is why as per DW-1 he requested them to execute and register the sale deed. The suit was filed on 7.4.1992, once the appellants admitted the respondents owners of the suit land upto the year 1985 and did not claim adverse possession against them, therefore, on the date of filing of the suit on 7.4.1992 they had not acquired the title on the suit land by way of adverse possession against appellants. Ex.D-1 is the statement dated 1.10.1990 of Tashi Ram before the Assistant Collector. In this statement also he has no where claimed adverse possession against the respondents. The appellants have examined Smt. Budhi as DW-6 and she has denied the preparation and execution of receipt Ex.DW-1/B at her instance. She has denied that she sold her share as well as shares of her children for consideration of Rs.1125/- on 19.11.1969 to Tashi Ram. In cross-examination

she has stated that respondents are in possession as per their shares on the suit land and enjoying the benefit therefrom.

11. The appellants are claiming adverse possession against respondents who are co-sharers in the suit land. ***In Janaki Pandyani v. Ganeshwar Panda (dead) by LRs. And another (2001) 10 Supreme Court Cases 434***, it has been held by the Supreme Court that adverse possession cannot be claimed by one co-sharer against another so long as the property has not been partitioned. In ***Deva (dead) through LRs. v. Sajjan Kumar (dead) by LRs***. ***(2003) 7 Supreme Court Cases 481***, it has been held that mere long possession of the defendant for a period of more than twelve years without intention to possess the suit land adversely to the title of the plaintiff and to the latter's knowledge cannot result in acquisition of title by adverse possession by the defendants on the suit land. In ***MD. MOHAMMAD ALI (DEAD) BY. LRS. V. JAGDISH KALITA AND OTHERS (2004) 1 Supreme Court Cases 271 ,*** it has been held that possession of a property belonging to several co-sharers by one co-sharer, shall be deemed to be possession on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers and the mutation in the revenue records in the name of one co-sharer would not amount to ouster unless there is a clear declaration that the title of the other co-sharers was denied and disputed.

12. In the present case the appellants have led no evidence to prove ouster of the respondents from the suit land. The

appellants have also not proved their animus to possess the shares of respondents in the suit land by way of adverse possession. The lower Appellate Court has appreciated the material on record rightly and has recorded a finding that appellants have failed to prove their adverse possession on the suit land. This is a finding of fact. It has not been shown what material evidence has been left or what inadmissible evidence has been considered by lower appellant Court for returning the finding of adverse possession against the appellants. No case of interference has been made out by the appellants. Hence, substantial questions of law No.1 and 2 are decided against the appellants and in favour of the respondents.

13. No other point was urged.

14. In view of the above discussion, the appeal is dismissed with costs.

November 6, 2007 ***(Kuldip Singh)***
(sks) ***Judge.***